



The Comptroller General
of the United States

Washington, D.C. 20548

Ratzenberger

Decision

Matter of: Donna J. Chambers - Waiver of Erroneous
Payments

File: B-229109

Date: June 8, 1988

DIGEST

Upon being discharged from the Air Force in July 1982, a member was entitled to pay for 13 days of work and 1/2 day of accrued leave. Due to an administrative error, leave taken just prior to her discharge date was added to her separation payment, resulting in an overpayment of \$180.27. Waiver is granted since the member's salary payments fluctuated, since she did not receive an itemized statement of her separation pay, and since she had no special knowledge of payroll processes. Under the circumstances, she could not reasonably have been expected to be aware that the error occurred.

DECISION

Ms. Donna J. Chambers, a former member of the United States Air Force, appeals the May 1, 1987, settlement of our Claims Group (Z-2878519) denying her request for waiver of \$180.27 which she was erroneously overpaid. For the reasons stated below, we grant the waiver.

BACKGROUND

Ms. Chambers was discharged from the Air Force on July 28, 1982. An itemization of her pay account shows that her separation pay should have been \$563.41 for 13 days of pay and 1/2 day of accrued leave. However, due to an administrative error, leave taken from July 22 through July 28, 1982, was not considered in the computation of her separation payment. As a result, she erroneously received a separation payment of \$743.68, causing an overpayment of \$180.27.

In her request for waiver, Ms. Chambers indicated that she had personally delivered her request for leave for the period July 22-28 on June 1, 1982, in accordance with Air Force procedures. Further, she indicated that she reviewed

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her records prior to her separation papers being typed in final and that the leave was accounted for at that time. Ms. Chambers asserted that she did not know she had received an overpayment until the Air Force notified her of the indebtedness on September 3, 1983. Up to that point, she had not received any itemized statements of her final pay or any leave and earnings statements for that pay period.

In a March 13, 1984, memorandum, the Air Force denied Ms. Chambers's request for waiver, and Ms. Chambers then appealed to our Claims Group. The Air Force investigative report accompanying Ms. Chambers' request recommended that her request be denied, stating that she should have known that she was only entitled to 13 days pay and 1/2 day accrued leave and that she should have questioned her entitlement to the end-of-month pay.

In its May 1, 1987, settlement, our Claims Group denied waiver by determining that Ms. Chambers was at fault since, as a reasonable person, she should have been aware of the fact that she could not use leave and subsequently receive compensation for the same leave. Our Claims Group found that she should have requested further information, including a written breakdown, to determine the basis for the payment.

Ms. Chambers disputes our Claims Group's determination, maintaining that she had done everything possible to ensure that the leave she took prior to her discharge was properly recorded and she had no reason to believe otherwise. Further, Ms. Chambers cites to a long history of fluctuating salary payments and indicates that, based on her usual pay in the months prior to her discharge, the amount of the overpayment was not sufficiently large so as to trigger a question in her mind as to its propriety. Finally, Ms. Chambers emphasizes that she had never received a final pay voucher or leave and earnings statement concerning this pay. Consequently, she contends that she had no reason to question her payment until she was notified by the Air Force in September of 1983 that it was in error.

OPINION

The Comptroller General is authorized by 10 U.S.C. § 2774 (1982) to waive claims for overpayments of pay and allowances involving members of the armed services if collection would be against equity and good conscience and not in the best interests of the United States. Such authority may not be exercised if there is an indication of

fraud, misrepresentation, fault or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim.

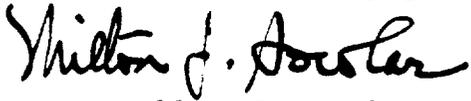
Responsible members of the uniformed services are expected to know approximately what their correct leave balance should be. A service member is therefore ordinarily considered to be at fault and barred from favorable consideration for waiver if the member receives an overpayment as a result of an incorrect accounting entry relating to his leave balance and he fails to make inquiry into the matter or otherwise fails to take appropriate corrective action. John J. Carson, Jr., B-184514, Sept. 10, 1975. However, we have held in some circumstances, where the member has received insufficient information, that overpayments resulting from erroneous leave transactions may be appropriate for waiver. Thomas M. Welsch, B-196461, Feb. 13, 1980.

In this case, we do not believe that fault may be imputed to Ms. Chambers since it does not appear that she was furnished sufficient information to determine that she was overpaid. Given the history of fluctuating salary payments she detailed, which the Air Force did not refute, as well as the fact that she believed her leave had been properly recorded and thereby taken into consideration in computing her final payment, we believe it is unreasonable to assume that she knew or could have known that she was receiving payment for that leave.

Further, we note that Ms. Chambers was not formally advised that she was overpaid until September 1983, approximately 14 months after the date of her discharge. This delay in notification is particularly problematic in light of the fact that during this period, Ms. Chambers never received a statement of leave and earnings or any other itemized statement of final pay which would have reflected the fact that the leave she had taken had not been deducted. Had she received such a record, it would be reasonable to require her to have questioned the overpayment. In the absence of such a record, and in light of the fact that her salary fluctuated, there is no basis upon which to impute knowledge of the overpayment to Ms. Chambers. Finally, there is no indication that Ms. Chambers had any special knowledge of personnel laws or payroll processes such that she would have known that her final payment had been incorrectly computed to include payment for the leave taken.

We believe that a consideration of the totality of the circumstances in this case supports a finding that Ms. Chambers was not at fault in accepting the overpayment. We find that collection action would be against equity and good conscience and not in the best interests of the United States.

Accordingly, we hold that the amount of \$180.27 representing the erroneous payment for leave taken is hereby waived.

for 
Comptroller General
of the United States